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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FIRST APPELLATE DISTRICT

DIVISION FOUR

In re ANGELO M., a Person Coming Under the Juvenile Court Law.	
SAN FRANCISCO DEPARTMENT OF HUMAN SERVICES, Plaintiff and Respondent, v. REBECCA F., Defendant and Appellant.	A094810 (San Francisco County Super. Ct. No. 508776)

Appeal from an order dismissing a dependency proceeding. We affirm.

BACKGROUND

Respondent San Francisco Department of Human Services petitioned to have Angelo M. detained four days after he was born on December 14, 1991. In March of 1992 the juvenile court declared Angelo to be a dependent child after it sustained allegations of respondent's petition that he had been neglected and was at risk of harm due to the incarceration and substance abuse problems of his mother, appellant Rebecca F. (who did not appear at the hearing), within the meaning of Welfare and Institutions Code section 300, subdivisions (b) and (j). Angelo was placed in the care of Sylvia J., his grandmother and appellant's mother, who was also caring for appellant's two other

children. Angelo's dependency was terminated in 1993 when the court dismissed respondent's 1991 petition and appointed the grandmother as his guardian.

In 1999 appellant petitioned for modification of the dismissal order, pursuant to Welfare and Institutions Code section 388, on the ground that Angelo "is being abused & neglected by the guardian." Respondent investigated the situation and concluded that "this family has a history of serious generational physical abuse, violence and substance abuse." Respondent recommended that appellant "receive an evaluation with recommendations for treatment," and that "the family be provided with services towards helping the mother and minor develop a relationship." In December of 1999 the juvenile court made the following orders: "388 W&I Petition withdrawn. [¶] Dependency Status reinstated. [¶] The minor is to remain in the care and custody of [respondent] for placement, planning and supervision and the Court approves the necessary and appropriate placement as follows: The minor shall reside in the home of the Guardian." The court also adopted reunification requirements for appellant, and scheduled a six-month review.

At the review the court received respondent's report that, although her relationship with her mother was uneasy, appellant was making progress with the reunification requirements and should be provided six additional months of reunification services. The juvenile court accepted this recommendation, continued the dependency, and scheduled a 12-month review.

In the report it prepared for that review, respondent described the relationship between appellant and her mother as "acrimonious." Appellant's visits to Angelo had been increased, then reduced when they produced "a significant increase in Angelo's acting out behaviors such as kicking his grandmother, throwing rocks at another therapist's car while at the therapy office, increased behavioral problems at school, and . . . threatening to run away." The ultimate recommendation was as follows: "[Appellant's] psychological evaluation stated she is unable to care for or protect the minor at this time. Angelo's psychological evaluation does not recommend that he be returned to his mother. It would be highly beneficial to this child if the mother and grandmother can work

through and resolve their conflictual relationship that has interfered with the emotional development of this child. Furthermore, this child would benefit from ongoing face to face and phone contact with his mother to allow an opportunity for them to continue to attempt to build a bond between them. Therefore, it is recommended that reunification services be terminated and this case be dismissed."

At the parties' request, the court referred them to mediation. Before the mediation was held, the grandmother moved for termination of appellant's visitation. On January 23, 2001, the date set for the 12-month review, the court was advised by the parties that mediation had failed. The court spoke with appellant and the grandmother, who agreed to try to work out a visitation schedule. The matter was continued to February 28.

On that date respondent's attorney asked the court "that the matter be continued for possible dismissal until the end of March." The court replied: "All right, the Court is going to continue the matter until 3/28/01 at 2:15. The purpose of that is for the parties to agree in the interim to exit orders. If the parties have not agreed, the parties will argue the matter on that date and the court will make exit orders."

The reporter's transcript for March 28 is less than one page. After appearances are stated, the transcript, in its entirety, records the following: "M. Thompson [respondent's attorney]: We are on calendar today for a progress report, and I believe at this time that all parties are in agreement that the case is appropriate for dismissal. [¶] The Court: Yes, I believe so. The Court is prepared to dismiss this matter today, leave the guardianship in place. Visitation will be at the agreement of the parties, meaning the mother and the grandmother. All right, thank you."

It is from the minute order for March 28 that appellant perfected this timely appeal.

REVIEW

Appellant contends the dismissal was in violation of Welfare and Institutions Code section 390, which provides: "A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice

and the welfare of the minor require the dismissal, and that the parent or guardian of the minor is not in need of treatment or rehabilitation." Both of the decisions cited by appellant deal with situations where a party to the dependency is objecting to its dismissal. (*In re Natasha H.* (1996) 46 Cal.App.4th 1151; *Allen M. v. Superior Court* (1992) 6 Cal.App.4th 1069.) The situation here is clearly distinguishable because no party objected. The possibility of dismissal was known by all to be a potential issue once it was recommended by respondent's report for the 12-month review. The court was clearly contemplating dismissal, as shown by its comments on February 28. Appellant cites no authority holding that parties to a proceeding, represented by counsel, cannot expressly or impliedly consent to the juvenile court's termination of a dependency proceeding. Such a rule would be contrary to established rules of consent and/or waiver, and would be pernicious to the effective functioning of the juvenile courts.

Appellant next contends that "the court erred in terminating jurisdiction in that the interests of Angelo were ignored and continued supervision was clearly necessary," in violation of Welfare and Institutions Code section 364, subdivision (c), which provides: "After hearing any evidence presented by the social worker, the parent, the guardian, or the child, the court shall determine whether continued supervision is necessary. The court shall terminate its jurisdiction unless the social worker or his or her department establishes by a preponderance of evidence that the conditions still exist which would justify initial assumption of jurisdiction under Section 300, or that those conditions are likely to exist if supervision is withdrawn. Failure of the parent or guardian to participate regularly in any court ordered treatment program shall constitute prima facie evidence that the conditions which justified initial assumption of jurisdiction still exist and that continued supervision is necessary." We cannot presume that the commissioner who presided over most of this case was oblivious to her duty to guard Angelo's interests (Evid. Code, § 664), and there is nothing in the record suggesting that such a lapse occurred. Moreover, although the dependency was dismissed, the juvenile court still retained jurisdiction to monitor the progress of Angelo's guardianship (Welf. & Inst. Code, § 366), a point the court noted for the record in 1993.

Appellant argues that "it was incumbent upon the court to make visitation orders instead of ordering that visitation be by agreement of the parties," because this gave the grandmother the power to block any visitation. Appellant cites no authority that a juvenile court must make a visitation order when it terminates a dependency jurisdiction, particularly where, as here, the interested parties have recently agreed upon a visitation schedule. There was no hint by anyone prior to the March dismissal that the visitation agreement agreed to by appellant and her mother in January could not be implemented or would break down. If matters do come to an impasse, appellant may apply to the juvenile court supervising Angelo's guardianship for a formal order regulating visitation.

Appellant's final contention is that her juvenile court counsel was ineffective. Appellant appears to argue that competent counsel would not fail to challenge "the improvident decision to dismiss [the] dependency" and would have insisted on entry of a visitation order. But appellant does not identify in her brief any specific and tangible consequence of a particular action by counsel which has prejudiced her, not as a matter of speculative apprehension, but as a clear and present reality; nor does she establish that counsel's action are beyond the realm of acceptable trial tactics. (See *In re Dennis H.* (2001) 88 Cal.App.4th 94, 98-99 and decisions cited.) Her claim must therefore be rejected.

The order of dismissal is affirmed.

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Kay, J.

We concur:

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Reardon, Acting P.J.

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Sepulveda, J.